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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

PLAINTIFFS' RESPONSE
TO NANA'S OBJECTIONS
TO PLAINTIFFS' EXHIBITS

1 Plaintiffs Enoch Adams, Jr., *et al.* (“Adams”) submit the following response to NANA’s
 2 Objections to Plaintiffs’ Exhibit List [Docket 217] (“NANA Objections”). NANA makes three
 3 objections: 1) several documents are hearsay; 2) it reserves its right to object to some exhibits on
 4 Rule 26 grounds; and 3) it joins Teck Cominco’s objections. Adams understands that the Rule 26
 5 issue is now resolved. Adams addresses Teck Cominco’s objections elsewhere (at Docket 233). It
 6 thus focuses on the hearsay objections here.

7 **I. THE CURRICULUM VITAE ARE ADMISSIBLE HEARSAY.**

8 NANA objects to Exhibits 7, 136, 137, 145 and 146 on the grounds that they are
 9 inadmissible hearsay. NANA Objections at 1. These exhibits are the curriculum vitae (“CV”) of
 10 Adams’ expert witnesses, Dr. Robert Moran, Ken Fucik, Randolph Fischer and Dr. Michael
 11 Kavanaugh, and Dr. Kavanaugh’s expert report. They are admissible hearsay under the Federal
 12 Rules of Evidence. Under FRE 803(6), a

13 memorandum, report, record, or data compilation, in any form, of acts, events, conditions,
 14 opinions, or diagnoses, made at or near the time by . . . a person with knowledge, if kept in
 15 the course of a regularly conducted business activity, and if it was the regular practice of that
 16 business activity to make the memorandum, report, record or data compilation, all as shown
 17 by the testimony of the custodian or other qualified witness” is admissible as an exception to
 18 the hearsay rule.

19 The term “business” here includes any profession or occupation. FRE 803(6). The CVs are
 20 admissible under the business records exception to the hearsay rule because they are records of the
 21 experts’ professional activities kept by the experts in the regular course of their professional activity;
 22 likewise the expert report.

23 In the alternative, if the Court does not agree that the resumes should be admitted under FRE
 24 803(6), they should be admitted under FRE 807:

25 A statement not specifically covered by Rule 803 or 804 but having equivalent
 26 circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court
 27 determines that (A) the statement is offered as evidence of a material fact; (B) the statement
 28 is more probative on the point for which it is offered than any other evidence which the
 proponent can procure through reasonable efforts; and (C) the general purposes of these
 rules and the interests of justice will best be served by admission of the statement into
 evidence.

The CVs are admissible under this rule because they have sufficient circumstantial
 guarantees of trustworthiness. The qualifications of experts are material facts. FRE 702 (expert

1 witness must be “qualified as an expert by knowledge, skill, experience, training, or education”).
2 The CVs are as probative of the expert’s qualifications as testimony from the expert at trial, but less
3 burdensome. The CVs should be admitted to serve the interests of judicial economy. They serve as
4 summaries of the experts’ professional experience for the court’s convenience. The alternative is to
5 require the expert witness to testify to each of his many qualifications on the witness stand, wasting
6 valuable court time.

7 Similarly, the expert report is a distillation of Dr. Kavanaugh’s views that is admissible
8 under FRE 807. It is offered as evidence of a material fact, it is more probative on the point for
9 which it is offered than any other evidence except the actual testimony of Dr. Kavanaugh which the
10 proponent can procure through reasonable efforts, and the general purposes of these rules and the
11 interests of justice will best be served by admission of the statement into evidence.

12 **II. THE OTHER DOCUMENTS ARE ALSO ADMISSIBLE.**

13 NANA additionally objects to Exhibits 138-144 on grounds that the documents are
14 inadmissible hearsay. These documents include various other reports, memoranda and Manuals.
15 Several are offered for purposes other than the truth of the matter asserted, such as Exhibit 142,
16 which is offered as evidence that Randolph Fischer has experience in doing the types of estimates
17 that he undertaking as his expert testimony in this case. Exhibits 143 and 144 are manuals on such
18 estimation. Exhibits 138-141 are resources used to estimate costs of water treatment and to
19 determine water treatment systems. All are admissible for the purposes for which they will be used
20 at trial.

21 Respectfully submitted,

22 /s/ Luke Cole

23 _____
Luke Cole
24 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February 2008, a true and correct copy of the foregoing Response to NANA's Exhibit Objections was served, via electronic mail, on the below identified parties of record:

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/s/ Luke Cole

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